UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11435(JMP)

- -x

In the Matter of:

CHARTER COMMUNICATIONS, INC., et al.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 17, 2009

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for Entry of an Order Extending Time to File Notices of Removal of Actions [Docket No. 441].

HEARING re Motion for Relief from Stay for Limited Purpose of Liquidating Claim [Docket No. 432].

HEARING re Goodell Class Plaintiffs' Motion for Class Certification and for Class Treatment of Their Proof of Claim [Docket No. 413].

HEARING re Goodell Class Plaintiffs' Motion for Estimation [Docket No. 414].

HEARING re Motion of Q Investments for Order Directing the Appointment of an Official Committee of Equity Security Holders [Docket No. 445].

Transcribed By: Clara Rubin

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. HESSLER: Good morning, Your Honor. Steve Hessler of Kirkland & Ellis on behalf of the debtors. Your Honor, today is the debtors' monthly omnibus hearing. There are five motions on today's agenda, although only one of which was filed by the debtors. With Your Honor's permission, we propose to proceed in the order of the filed agenda.

THE COURT: That make the most sense.

MR. HESSLER: Your Honor, the first motion on the agenda today is the debtors' request for an extension of their removal deadline. Section 1452 and Rule 9027 together provide a debtor ninety days from the petition date to remove prepetition civil actions to federal district court. The removal deadline in this case is June 25th. The debtors are party to numerous actions nationwide and are still completing their analysis of whether any of these actions will be removed. The debtors therefore propose to extend the removal deadline to the later of, for prepetition actions, the plan confirmation date or thirty days after entry of any order terminating the automatic stay in any particular case and for postpetition actions, the time periods set forth in Rule 9027(a)(3). As set forth in our motion, the debtors believe cause exists for this extension and that it's consistent with relief in similar cases in this district.

We note, Your Honor, that no party has objected to our removal extension, and we would request that the proposed order be entered.

THE COURT: The motion's granted.

MR. HESSLER: Thank you, Your Honor. Your Honor, the second motion on the agenda is the motion by Robert and Kerry Haws to lift the automatic stay. I'm happy to cede the podium to the movant, but I don't know if their counsel is making an appearance today.

THE COURT: Is there anyone here on behalf of the Haws plaintiffs?

Is there anyone on the telephone in reference to this matter?

I hear no response. It appears that this motion is not being prosecuted.

MR. HESSLER: Your Honor, some very basic background on it.

THE COURT: I read the motion and I read the responses. The motion fails to meet any of the requirements of the Sonnax case and fails to allege cause for relief from stay. The motion would have been denied if it had been prosecuted. And you can submit an order denying the motion.

MR. HESSLER: Thank you, Your Honor. We will do so.

For the next items on the agenda, numbers 3 and 4, I believe opposing counsel is here today, Your Honor.

THE COURT: Okay.

MR. PELLETIER: Good morning, Your Honor. David Pelletier of Axley Brynelson on behalf of the Goodell class plaintiffs. As Your Honor is aware, we filed our motions for certification and estimation. Debtors requested a briefing schedule as to whether the Court should exercise its discretion. The Court encouraged the parties to enter into a stipulation, which we have attempted to do and have not been able to do, although I believe we are very close. And we filed a motion on Monday of this week requesting that your Court enter an order effectively incorporating the stipulation with our changes. It was a stipulation proposed by debtors with some minor changes, and I'd like to discuss those changes, Your Honor.

THE COURT: The problem is a stipulation means the parties have agreed to the language. And so --

MR. PELLETIER: Yes.

THE COURT: -- if there is to be an order approving a stipulation, that's one thing. If there is an argument about drafting, that's something that I don't typically become involved in, certainly not in the midst of a crowded courtroom.

As I read your papers, this seems to be about venue of the underlying action in the Western District of Wisconsin and some concerns that the wording of the existing stipulation may be designed to give the plaintiff class some kind of tactical

advantage with respect to that issue.

I have no idea whether or not the wording does or doesn't, but I guess a question that I have for the debtors is why we're even spending time on this. Why can't this just be resolved with some drafting, a sentence that says, notwithstanding anything set forth in this stipulation, there's absolutely no advantage to the plaintiff class with respect to venue?

MR. PELLETIER: Your Honor, and we absolutely agree that that would be a more than acceptable clause to put in the stipulation. We --

THE COURT: I'm not trying to draft your stipulation. I just want to know why this hasn't been resolved before we got to court today. What's going on here? Why is this a problem?

MR. PELLETIER: May I address that, Your Honor, or would you like to hear from the debtors?

THE COURT: I'd like to hear from the debtors, actually, because I've read your papers.

MR. MCKANE: Good morning, Your Honor. Mark McKane, Kirkland & Ellis, for the debtors. We did not move to have this application or the stipulation submitted, and we were not done negotiating. We'd like to get this issue resolved, and we can address the venue issue. We don't think it's appropriate for it to be in front of you today, and we only filed the opposition to simply flag the issue that we want to get

resolved. I think we could do this right now outside the Court's presence.

THE COURT: I think that that's what should happen. I don't think we should spend any more time publicly drafting a document that can be better drafted in private. And if, in fact, the only issue here is making clear that the debtors have reserved any and all rights with respect to challenging venue, it seems to me that it's pretty easy to write words that say just that.

MR. MCKANE: Understood, Your Honor. It's a drafting exercise that we should accomplish now.

THE COURT: Let's push this off to either the end of the calendar to give the parties sufficient time to try to work out language, or at least to deal with the principle as to how it will be resolved. And if it can't be resolved, you can report at the end of the calendar to me.

MR. MCKANE: Thank you, Your Honor.

THE COURT: Okay.

MR. HESSLER: Your Honor, the next item on the agenda is the Q Investments equity committee motion.

THE COURT: Okay.

MR. FLASCHEN: Your Honor, good morning. Evan Flaschen of Bracewell & Giuliani for Q Investments, which manages a number of funds, including R2 Investments, which is the owners of the Charter shares. If I can start by noting I

seldom make it to court these days, so I appreciate the opportunity to appear before you.

THE COURT: I appreciate the opportunity to see you.

MR. FLASCHEN: The question here is what's Q Investment's doing in front of this Court, but I want to start with what I'm doing here.

THE COURT: Yeah, what are you doing here?

MR. FLASCHEN: I've been a bankruptcy lawyer since 1982.

THE COURT: I think I remember when you started.

MR. FLASCHEN: I have headed the restructuring practice first at Hebb & Gitlin and at Bingham McCutchen, which acquired Hebb & Gitlin, and now Bracewell & Giuliani since 1992. I don't want to say I have a perfect memory, but in my memory I do not recall a single time in that twenty-seven years I've ever represented an equity committee, ever sought or interviewed to represent an equity committee, ever sent a letter to the United States Trustee or filed a motion with the Court for an equity committee, neither I or my team.

So when Q Investments called, and they're not a current client, I don't know them very well, I said sounds interesting, you got the wrong guy, let me give you the names of the usual suspects. Their response was tell him we don't want one of the usual suspects, this is not the usual situation.

What I'd like to walk through with you is some valuation issues and then the Paul Allen releases and then come back to what appears to be the primary objection, or one of the most significant ones, is why'd you wait so long, how come you're here now, why weren't you here at the beginning of the case?

THE COURT: Well, that's only one of the many objections --

MR. FLASCHEN: Yes.

THE COURT: -- that have been lodged.

MR. FLASCHEN: I think it's the primary objection of the United States Trustee, I should clarify. Valuation, first question is why do we not have any witnesses, why don't we have any experts? One of the reasons Q's motion is unusual: They're not your normal shareholder seeking appointment of the committee. They're not the classic mom-and-pop who's held those shares for ten years in rose-colored glasses. They're not the classic hedge fund investor who bought 20 million shares yesterday for 1 cent, screaming bloody murder today and hoping to settle tomorrow for 5 cents. They've been a shareholder of Charter since 1999, on and off, and more than 75 percent of the shares they own today were acquired prepetition, unfortunately at market prices.

So they're already looking at a loss of more than 14 million dollars. For them to mount an evidentiary hearing

today would require an expert financial advisor. You're talking three-, four-, five hundred thousand dollars just to get a witness to testify. I know in the Oneida case they had days of testimony on valuation. They don't want to throw more good money after bad. They think the principles speak for themselves and they're willing to try this without the evidence to back this up, because the only matters I will refer to on valuation are already in the public record.

The first item is Charter's first-day affidavit. Mr. Doody, who I believe is in court today, he starts by saying this Charter's no ordinary bear. Unlike many companies entering Chapter 11, Charter comes before this Court at a time when its business is continuing to grow. Charter has had nine consecutive quarters of double-digit adjusted EBITDA, cash flow growth, on a pro forma basis, and 700 million dollars of cash.

To refer to some of the authorities cited in our pleading, this is the classic situation of overleverage, not poor operations. This is, in fact, improving operations continuing to improve.

Next item we refer to is Charter's May 7th press release announcing it's first-quarter results. This is a quarter when the public knew Charter was negotiating, was going to be filing a Chapter 11 plan, management was focused on negotiations. One would expect performance to be relatively poor during this first quarter.

According to Charter's own press release for the first quarter, revenues grew 6 1/2 percent; adjusted EBITDA grew 13.2 percent. Their margin of 37.1 percent, pretty nice cash flow margin, increased more than 200 basis points. Their average monthly revenue per basic video customer, ARPU, which I hope Your Honor knows what it is because I'm not quite sure, increased 9.9 percent. RGUs increased. Commercial revenues increased 16 percent. I could go on. The point is a remarkable first quarter in a time when you would think any company would be suffering due to diversion of management attention, due to the time of year, due to the fact that they filed for Chapter 11.

We also have the position of the convertible noteholders who filed a pleading yesterday. And we've already seen one objection saying, well, what do you expect, Q holds little under 10 percent of the convertible notes. Of course they filed saying they agree with our valuation.

Respectfully, Your Honor, I think recent events in Chrysler and General Motors have established quite clearly that no one pulls the strings of Tom Moreah (ph.). They filed that objection; it stands on their own. We did not tell them to file it. We did not review it. The convert's (sic) filed their own objection on their own -- I'm sorry, statement on their own terms. They haven't objected to our committee; they've taken no position. They wanted to make it clear they

too agree that this is a solvent entity.

THE COURT: I read your papers. It was, at least in my view, a preview of coming attractions in reference to confirmation.

MR. FLASCHEN: Thank you. Another part of the objections is that there's 8 billion dollars of debt being eliminated. So it must be insolvent. The debt's being eliminated, as the debtor acknowledges, for debt services reasons: not enough cash flow to pay the interest, not because of valuation issues. And let's not forget this 8 billion of debt is being converted both into equity and into a rights offering. The lower the valuation of that equity, both the greater opportunity for appreciation of the shares this 8 billion is getting and the cheaper the price of the rights offering. It's based on the valuation.

So it is in the interest of the creditors who are getting the stock for as low a valuation of this debtor as possible, therefore as low a valuation of the new equity as possible, because it's only upside from there for them.

So the standard, depending on which case you read, it is either is this debtor hopelessly insolvent or is there a legitimate dispute? Respectfully submit there is a legitimate dispute based on the debtors' own public filings given the growth. And recall, the debtors' valuation must have preceded the signing of the plan support agreement; it's February 15th.

So we're talking January, maybe December, at the absolute nadir of the current financial crisis. There's hardly roses growing in the garden today, but we have the green chutes that have been referred to. Things are better. The equity markets have opened up again. I'm in another case where they're rushing to sell 2 billion dollars of equity because there's money available again. We have DIP financings. Money is out there again. Is everything better? Of course not. Is everything better than December and January when this valuation was done? Absolutely.

So all we submit, yes, there is a legitimate dispute. I'm not going to sit here today and say I'm a valuation expert and absolutely categorically just a solvent debtor. What I'm going to say is after I told Q they got the wrong guy, they walk me through their valuation. I said you know, I think you have a point there, but even then, I said, I needed to consult to the financial advisor, I can't do this on my own. They agreed.

We talked to one of the Big Three, Chapman (ph.) Capital, whose first response was why do you want us to talk about equity. They took a look at it, and I don't mean in terms of testifying what their view of valuation is, other than to say they are prepared to seek representation of this equity committee if it's formed, which probably gives an indication of their view of valuation. And they certainly confirmed the

industry statistics that Q Investments put forward.

The next point that attracted me to this unusual situation, they told me please read the plan disclosure statement, tell me what you think about the releases of Paul Allen. Paul Allen, prepetition, owned 52 percent of the stock and, if I read it correctly, 91 percent of the voting control. The disclosure statement describes a 9019 settlement with Paul Allen. He gives up some disputed claims he has against the estate, in exchange for which he gets 35 percent voting control, not a coincidental number; warrants for more equity; 175 million dollars in cash; the estate is paying him 175 million dollars, and the estate is giving him 85 million dollars in new notes; and up to 20 million dollars for his fees and expenses. I wish I was sitting by the phone when he called.

That's a pretty good deal. And, yet, it's not simply in exchange for these disputed claims. Referring to the debtors' disclosure statement, in small print -- I'm on page 28, I believe: "The settlement was motivated in part" -- that's their words, and then I'll paraphrase -- in order to preserve very substantial net operating losses and, even more critically, in order to preserve the absence of a change of control, because, as I'm sure you're aware, there's a big dispute in this case about whether this secured debt is properly reinstated. And one of the arguments the secured

lenders have is -- would have had under their contract is change of control, you can't fix that. So the debtors said we're not going to have a change of control. That's where the 35 percent in stock comes in because, under their contract, if Paul Allen still owns 35 percent there's no change of control.

It also provides for full releases. And this is where we come in. Doesn't just release all his disputed contract claims, management claims, whatever it is; he adds some debt. I'm not questioning any of that at the moment; I don't know enough. But he's also getting releases as an officer, a director, as a controlling shareholder. And most importantly, those releases are not only binding on creditors, they're binding on shareholders, shareholders who are getting nothing under the plan, who are deemed to reject the plan and, I'm confident, would vote against it even if they had a vote. They are forced to release Paul Allen.

So they're getting nothing; Paul Allen is getting all these things. The response is he's not getting any of that because he's a shareholder; he's getting that to settle his disputed claims. So since he's getting nothing on account of his shares, you should not get anything on account of your shares. Okay, then why are you getting a release from shareholders? If you acknowledge he's not getting anything as a shareholder, why does he get a release as a shareholder? We get no benefits from the settlement, however good it may be,

and we're getting no recovery at all.

And this is a live issue. There's already -- I think it was attached to someone's pleading; maybe -- it may have been ours. There's a class action lawsuit filed against Mr. Allen. In fact, I know Your Honor would have seen it because various of the moms-and-pops with rosy glasses wrote letters to this Court and they were attached to the debtors' pleadings.

So there's already a class action against Mr. Allen. I guess that class action would be dismissed with prejudice because of this release, even though creditors are getting nothing.

Responding to the objections, I'm only going to cover three of what you correctly characterize as the many points: one, that the settlement's been fully vetted; two, the added expense of an equity committee; and three, what are we doing here so late?

Fully vetted. When I did what I normally do, and when I talk to clients I say I always represent the good guys, the creditors, we were involved in Klein (ph.) Corporation the first time it filed Chapter 11.

THE COURT: You can't possibly mean what you just said. The room is filled with good people. And there's no bias here --

MR. FLASCHEN: Of course not.

THE COURT: -- in favor of creditors, shareholders --

MR. FLASCHEN: Well, Your Honor, I did not mean to imply --

THE COURT: -- debtors --

MR. FLASCHEN: -- good guys in the Court's eyes as opposed to the connotation --

THE COURT: I understand good guys in your eyes because they pay fees without court approval.

MR. FLASCHEN: That doesn't hurt, Your Honor. In Klein, we represented unsecured creditors. The objective was to reinstate the secured debt. The challenge was to not trigger a change-in-control provision. Absolutely we negotiated heavily with the existing shareholders, but the negotiation there as, I submit, the negotiation here, was how much do you have to give the guy for him to be willing to play ball and keep the voting control to avoid triggering the change in control? Not an improper motive. Change in control is important here. Net operating losses are very important here, including to us the shareholders if we have a crack at this. But the motivation isn't we don't want a release or negotiating a release. The motivation isn't we're negotiating how many shares you get. The motivation is how much will it cost us? So it benefits us as creditors because we get the benefit of the reinstatement of the secured debt; we get the benefit of the net operating losses.

That was not from the perspective of the shareholders, nor should it have been; they're creditors. In the normal case, and I think Judge Gropper mentions this in Oneida, at least you have management. There are fiduciary duties to shareholders, even insolvent companies. Management presumably negotiate for the benefit of the shareholders. Respectfully, management is Paul Allen; 91 percent voting control. '

I don't mean, again, anything improper or inappropriate or under-the-table, nothing like that. I'm pointing out the inherent conflict of interest, as appeared in Oneida, with management and a board negotiating with creditors when the largest party involved is Paul Allen and you need to give Paul Allen a recovery and you give nothing to other shareholders. That at least needs to be aired to see whether that was appropriate.

And, again, the class action lawsuit claims it wasn't claimed people breached their duties. I'm not going to comment on that. I don't know enough to know. It sure does look like something that needs to be investigated and could not fairly, impartially have been vetted by existing management and the board.

Item 2, expense. Paul Allen is getting up to 20 million dollars; one shareholder for his fees and expenses. If the equity committee is 10 percent of that, 15 percent of that, I submit, in the context of this case, in the context of how

much they're willing to pay to one shareholder for his fees, it is not a burden to this estate such that it would outweigh the other issues.

All right, timing. I had one other point. They do mention the United States Trustee is objecting to the releases and they can take care of shareholders. We greatly respect the United States Trustee's views. They're up against Kirkland & Ellis; Skadden Arps for Paul Allen; Paul Weiss. Are they going to be able to -- while all being funded by the estate, the United States Trustee, going to have the time and ability to conduct the discovery about the background of the settlements, take the depositions of the parties, what was the motivations of the board, did people talk about releases, did people talk about shareholder recoveries? Is the U.S. Trustee going to be able to engage a financial advisor to value the settlement? Is the settlement, from shareholders' point of view, fair value, what -- his claims that were waived in exchange for all this recovery he's receiving?

U.S. Trustee has tried and, remarkably well before the deadline, U.S. Trustee's already filed an objection, which we interpreted as a signal. And they, in that objection, refer to our motion. It's a real big issue here, and we think it should be properly vetted by the shareholders who have the most to lose by it, because not only are we getting nothing under the plan, the lawsuits filed against Mr. Allen will go away as well

for no consideration.

Timing. Today's June 18th (sic). This case was filed March 27th. What are we doing here -- excuse my math -- ten weeks, eleven weeks, after the filing date? Well, let's back up. We sent our letter May 18th; so, seven weeks after the filing date. Add to that the ten days. U.S. Trustee rightly requested for other parties to comment, who then requested an additional four days, getting us to Friday. We filed our motion on the following Monday. Your Honor was kind enough to give us short notice, but here we are.

So it is a month after we filed -- we sent our letter, but it's seven weeks after the petition date. This isn't like the John --

THE COURT: But wasn't it also after the approval of a disclosure statement?

MR. FLASCHEN: Yes. But it's not Johns Manville --

THE COURT: How do you explain that delay?

MR. FLASCHEN: Yes, I do. Yes, Your Honor. Why May 18th? Why not April 18th? Two things, two quite specific things: a May 7th press release in which the debtor says we've had this great first quarter notwithstanding everything that was happening, increasing growth, increasing revenues, increasing everything; second item, the debtors' valuation was a peer group of companies and compares the valuation of Charter to that peer group of companies.

Q Investments looked in The Wall Street Journal from March 9th until May 18th, the day we filed -- we sent our letter. The average stock price increase for that peer group of companies was 67.6 percent. This is an improving market. It is a market in which the stock of companies like Charter -- the companies that they selected are like Charter -- is increasing in value -- again, I'm terrible with math -- 400 percent a year, if that one period continues. You add those two things; Q said you know what, it's still going to cost us some money to get in front of the Court; although, Your Honor, I will say, we agreed to a cap, because this is one we actually believe in. We're not doing this, as you said, for the fees. We're doing this -- first time I've ever done it -- because, by goodness, I think they have a legitimate grounds to argue. And they said we'll still pay the fee cap at least to get in front of the U.S. Trustee, and now in front of the Court, to present our arguments.

Even so, seven weeks, okay, we know why you did it then, but the confirmation's July 20th. Even if you filed it as fast as you reasonably should have filed it, you can't slow down confirmation of plan support agreements that die on July 20th. These plan support agreements, for the creditors, are predicated on getting this stock and getting this rights offering at a valuation based on January numbers. The more you go past July and the more apparent it is the stock is worth

still more, I think it makes what they're recovering more suspect, but it also certainly makes them motivated not to walk away from a plan support agreement when they are getting stock at such low values.

Second, most telling of all, the plan support agreements, as I read the disclosure statement, say that the effective date should occur within 150 days, but if there is a delay in government consent or approvals the effective date can occur as late as December 15th, 2009. If they're willing to wait till December 15th, 2009 for an effective date, for whatever reason, respectfully submit that the relatively short delay an equity committee would want in a July 20th confirmation date would still give this company plenty of time to emerge, months before December 15th.

THE COURT: Let me ask for a clarification as to that last point, because the papers in opposition to your motion have talked about the risk associated with appointing a committee this late in a case, which is heading toward confirmation within weeks. This is the first I've heard you confirm that the appointment of a committee would carry with it some necessary delay. How much delay would be involved if a committee were appointed and if your client were on the committee? And there are serious questions as to whether your client would qualify as a member, but let's just say for the sake of discussion that most lawyers don't seek to appoint

equity committees without at least the hope of someday representing that committee. How much of a delay are we talking about?

MR. FLASCHEN: Let me talk about the factors that go into that and then make a prediction. Were this Court to approve today formation of the committee, the U.S. Trustee still has to form it. They still have -- the U.S. Trustee still has to wrestle with issues like is Q eligible? They make a big deal of that. That's not today's issue; that's the U.S. Trustee's issue. We think Q is eligible, and we're happy to explain to the U.S. Trustee why they should be appointed. But, in any event --

THE COURT: No, that's just a shot at your client. That's --

MR. FLASCHEN: But that takes -- my point is that takes a few days, committee to be appointed, to hire whoever they hire as counsel and financial advisor. Then you need to be ready for a valuation fight. So you need a financial advisor to get going quickly. And you need to test the releases, which is discovery and depositions. And with the most cooperative debtors and shareholders in the world, and I question that's what we would be up against, it would be a challenge to be ready by July 20th.

I'm no litigator, as you could probably tell by today's appearance. I would be naive to say that it'll take

one month, because, you know what, that's August and I might not be able to find Paul Allen or directors or managers or Q or whoever else it is. That's a tough month.

So could it take until early/mid-September? It could. I would hope to do it sooner. I would hope the committee does it sooner, whoever their counsel is. Does early September give them plenty of time to emerge prior to their own December 15th drop-dead date? Absolutely.

THE COURT: Okay. I understand what you're saying. What you're saying is that the appointment of a committee will cost millions of dollars and will involve perhaps several months of delay.

MR. FLASCHEN: That is one of the things I'm saying, yes, Your Honor, and I'm saying, respectfully, both of those things are well worth it.

THE COURT: All right, why don't you proceed?

MR. FLASCHEN: That's all I have to say, Your Honor. Thank you.

THE COURT: Oh, okay. Let's hear from those who disagree.

MR. HESSLER: Your Honor, again for the record, Steve Hessler of Kirkland & Ellis on behalf of the debtors. Your Honor, as we set forth in the response objection we filed yesterday, the debtors oppose Q Investments' motion for the appointment of an official equity committee. As we noted,

there have been two requests for an official committee in this case. The first request was made within a week of the petition date. The U.S. Trustee denied that request. The second request was made almost two weeks after this Court approved the debtors' disclosure statement. The U.S. Trustee denied that request as well. The second request is obviously the request that the equity committee motion brings before this Court.

The debtors assert the governing legal standard and the circumstances of this case demonstrate the U.S. Trustee properly exercised her discretion in both instances. Your Honor, we have to begin with the relevant legal standard. The analysis -- or under Section 1102, an equity committee is merited only where it is, quote, "necessary" to assure the, quote, "adequate representation of equity securityholders".

It is well-settled in this district that equityholders seeking appointment of an official committee bear the burden of satisfying at least two factors. The first factor, Your Honor, is that there is a substantial likelihood of equityholders receiving a meaningful distribution in the case. The second standard is that equityholders must show they are, quote, "unable to represent their interests without an official committee". Q Investments did not satisfy these factors before the U.S. Trustee, and the equity committee motion has not satisfied these factors before this Court.

Importantly, Your Honor, an appointment of an equity

committee here would be unprecedented. As this Court is aware, the debtors' disclosure statement was approved six weeks ago, almost six weeks ago, on May 7th. Voting on the debtors' plan concluded two days ago on Monday, June 15th. Confirmation hearings begin in a little over one month on July 20th. Appointing an equity committee in these circumstances would not just be exceptional, it is, as far as we can tell, without precedent.

The equity committee motion cited twenty-six cases in support where an equity committee was appointed, and in all twenty-six of those cases the equity committee appointed was appointed before the approval of the disclosure statement. The debtors searched, and we were also unable to find any case where an equity committee was appointed after a disclosure statement had been approved, much less after plan voting had concluded.

Under this district's application of Section 1102, the equityholders seeking appointment of a committee must establish there is a substantial likelihood they will receive a meaningful distribution in the case. The equity committee motion has not established any likelihood that they will receive any distribution in these cases.

Your Honor, under the debtors' plan, over 8 billion dollars of indebtedness that is senior to CCI equity interests will be eliminated. The plan provides, therefore, that equity

interests in CCI will not be receiving any distribution on account of these interests.

Your Honor, in determining whether to appoint an equity committee, courts in this district look to whether the appointment would lead to unwarranted costs and the potential for undue delay. Mr. Flaschen addressed both of these points. In their papers they conceded the appointment of an equity committee would lead to additional costs and didn't address delay as directly as Mr. Flaschen did today, but let's take both of these in order.

In their motion, Q Investments noted, or argued, that Charter has plenty of cash to pay for counsel. This, of course, is not the standard. Whether the debtors have the ability to pay professional fees, if that was the standard, an equity committee would be appointed in every case where a debtor was not administratively insolvent.

With regard to delay, in the motion Q Investments argued that the debtors' reasons for wanting to exit Chapter 11 are unclear. We disagree strongly. We believe the reasons are abundantly clear, as set forth in the disclosure statement and in the many hearings that we've had before this Court thus far in these cases.

The Court has approved a fast-track reinstatement, discovery and litigation schedule, specifically tied to a July 20th confirmation hearing date. The restructuring agreements

in support of the debtors' plan require the plan be confirmed with 130 days after the petition date and that the plan become effective within 150 days after the petition date. Pursuant to these agreements, members of the crossover committee have agreed to invest up to 2 billion dollars in reorganized Charter. And, again, voting on the plan has concluded. There's absolutely no support whatsoever for Q Investments' assertions that the parties to the plan support agreements will maintain their obligations if these cases are delayed beyond the contractual dates.

We would note for the Court also, Your Honor, that the debtors are paying 20 million dollars per month in default interest. So it is vastly overly simplistic and economically unrealistic to say that the debtors can remain in bankruptcy while another committee is appointed to perform similar functions that are presently being performed by the official committee of unsecured creditors, and also performing the oversight function on certain issues raised by the equity committee that the U.S. Trustee's Office is currently pursuing in this case.

Mr. Flaschen just indicated before the Court that the delay involved here could be up to the middle of September before an equity committee can be constituted, before financial advisors could be retained, before additional diligence into issues that have been vetted carefully by multiple

constituencies in this case can be fully pursued, and before litigation that is set to go before this Court in approximately four weeks would have to be pushed approximately another two months. Your Honor, a critical part of the standard in this district for whether to appoint a committee is there's a balancing test that examines whether the cost of the additional committee significantly outweighs the concern for adequate representation of equityholders. Again, equityholders have already filed two requests with the United States Trustee in this case. We've responded to both those requests, as have our key constituencies done so. There's a motion before this Court that we have responded to and that we are arguing.

The equity committee motion is brought by a major firm on behalf of a sophisticated client that owns nearly 5 percent of CCI common stock and who purchased 4 million shares on multiple occasions after the petition date. It's highly evident that equity is adequately represented in these proceedings, Your Honor.

I want to address the last point that Mr. Flaschen brought up, which was why the motion -- why the Q Investments motion was brought so late in this case.

THE COURT: Let me -- before you move on, let me just --

MR. HESSLER: Certainly.

THE COURT: -- react to something you just said. You

said the fact that Q Investments acquired significant equity postpetition and has retained well-respected counsel is evidence that equity is well-represented in this case; I think that's what you said. I don't understand that argument. What is the evidence that equity is well-represented in this case? Because, just because some equityholder hires a lawyer to move for appointment of a committee, and that firm is obviously charging at high hourly rates for services that are being performed, for purposes of obtaining a committee, does not necessarily mean that if the committee is not formed that equity is adequately represented. I just want to understand your point.

MR. HESSLER: Understood, Your Honor. To clarify, I was indicating, with that chain of events that have happened in this case, that there have been two requests and that we are now arguing a motion, that equity has not been silent in this case. To expand on it a bit is the issues that are being identified by Q Investments that are critical to equityholders as a group; for instance, the Allen settlement; for instance, releases. These are issues that, as we set forth in our papers, have already been closely scrutinized by multiple parties, are still being closely scrutinized by multiple parties. All equityholders in this case, including the movant here, had the opportunity to object to these issues at the disclosure statement hearing and still retained the opportunity

to object to any of these issues at confirmation.

And again we would note, to the extent that releases were brought up by Mr. Flaschen, the United States Trustee has already filed an objection to the plans' nondebtor releases. And that issue will be litigated -- or that issue will be presented before this Court and ruled on by this Court at confirmation, pursuant to the United States Trustee's objection, Your Honor.

THE COURT: Okay.

MR. HESSLER: Thank you very much, Your Honor.

MR. ELKIND: Good morning, Your Honor. David Elkind from Ropes & Gray on behalf of the official committee of unsecured creditors. Your Honor, the creditors' committee opposes the motion for formation of an equity committee, believes the U.S. Trustee acted properly in twice denying the request, and also joins in the -- we've submitted our own objection, and we also join in the objection to the motion by the debtors.

I'm going to be brief. I think the issues are pretty clear-cut here. The law is very clear as set forth in the Williams case -- the Williams Communication case and the other cases cited in our papers as well as the debtors' papers that there are two fundamental threshold issues that have to be met for appointment of an equity committee, and they are, number one, that there is a, quote, "substantial likelihood" that

equityholders will receive a, quote, "meaningful distribution" in the case; and second of all, that equityholders are unable to represent their interests in the bankruptcy case without an official committee. Neither of these requirements is met.

At the outset, Q Investments offers this Court no evidence whatsoever that there is any, any conceivable recovery for equityholders. They have no valuation. They have no evidence. The fact that the company is doing well speaks nothing to the fact that an overleveraged company can be doing perfectly well and yet have many different tranches of bonds that have zero value, let alone equity that has no equity.

Here, not only is there no affirmative evidence that there's any conceivable recovery available for equityholders, but the evidence is quite clearly to the contrary. The debtors have attached as Exhibit B, I believe it is, to their motion papers the records of trading in many, many of the issues of debt of the various debtor holding company entities. I think it's Exhibit B to their papers. And just looking at that Exhibit B, which was compiled on May 29, which is a relatively recent snapshot of where these notes are trading, it's apparent that at least ten or twelve issues of debt at the levels of CCH I and Charter Communication Holding are trading anywhere between half a cent on the dollar and one and a half cents on the dollar.

So the notion here that these companies are solvent or

conceivably could become solvent is simply preposterous. There is a market, and the market clearly shows that there is no support for any claim that there is any possibility of a recovery for equityholders.

In addition, as counsel for the debtors noted, there is a proposed elimination of 8 billion dollars' worth of debt. That debt is not going to be eliminated if there is value there for those debtholders.

As to the second threshold requirement that the equityholders are unable to represent their interests in the bankruptcy case without an equity committee, I think that is -- that requirement clearly is not met for the appointment of an equity committee. All of the issues that counsel identifies, ably identifies, are being vetted and examined by a variety of other parties, not only including the U.S. Trustee but also including our committee and others', and will continue to be examined and vetted at the hearing on confirmation. Counsel for any equityholder which chooses to raise any of the issues on its own can do so. And so neither of these threshold requirements are met.

Wholly apart from that, even if the threshold requirements could conceivably be met here, which they cannot, the Court would have to consider other issues such as delay, expense, the timeliness of the request, and all of those factors clearly mandate overwhelmingly against appointment of

an equity committee. We have a disclosure statement hearing, a disclosure statement that's already been approved. We have a confirmation process that must proceed in accordance with schedules proposed. We have very significant debt service expenses that are incurred by reason of delays, delays which counsel now concedes will occur if there were an equity committee.

Simply put, we think there's no basis for this motion. The basic requirements haven't been met. And even if they conceivably were met, there couldn't be a more compelling case against the appointment of an equity committee given the circumstances of this case. Thank you, Your Honor.

THE COURT: Thank you.

There are other objections that I've read. And anybody who wishes to speak, who has filed an objection, is free to do so now.

MS. MEYERS: Good morning, Your Honor. Diane Meyers of Paul Weiss on behalf of the crossover committee. I'm not going to repeat all the arguments that have been made by counsel. I just wanted to point out just a couple of other factors which I believe weigh in favor of denying the motion and not appointing an equity committee in this case.

Not only has the disclosure statement been approved and the voting deadline under the plan passed, but the deadline for subscribing to the rights offering has also already passed.

So, creditors have already subscribed to the rights offering. I think, under these circumstances, that the delay in filing the motion to request the appointment of this committee, I think, is just -- it's not justifiable.

And I also think, in terms of the deadlines for the financing commitments and other commitments under the plan support agreements, et cetera, not only the outside date of December 15th assumes that we have confirmation sometime in the summer, because regulatory approvals -- some of that cannot even be sought until after confirmation. So there's a few-month delay between confirmation and closing in order to get the regulatory approvals, which we can't seek prior to confirmation.

If we move off confirmation, we're talking September, and that's probably even hopeful; we're talking about not even having a confirmation till the end of the year, moving this whole thing off until next year. I think that that's -- and I don't think Mr. Flaschen's client is in any position to renegotiate contracts that have already been signed.

And I would also just point out, in terms of the Allen settlement, not only is the U.S. Trustee and other parties vetting the Paul Allen settlement, although Paul Allen was a shareholder, we don't believe that the settlement agreement is at the expense of shareholders. It was agreed to by creditors who would otherwise -- who have agreed to certain consideration

being given to Allen. It's not at the expense of other shareholders.

And I would also point out that it's not only bondholders that are getting -- that are converting their bonds into equity that are being -- the debt is being eliminated, there are additional bonds at least two levels above CCH I that are being eliminated and are not getting the lion's share of the equity.

And I would also point out that the CCH I bondholders who are getting the equity are also participating in the rights offering and putting in 2 billion dollars into this debtor. Thank you, Your Honor.

THE COURT: Thank you.

MR. UZZI: Your Honor, Gerard Uzzi of White & Case on behalf of Law Debenture. Your Honor, we filed a reservation of rights. I think our paper speaks for itself. I rise solely because there was a reference made to one of my partners and what we might be doing in other cases. I don't think what my firm does in any other case prior to this/after this bears any relevance on the issues in this case, and I would ask Your Honor to give no weight to that.

THE COURT: I didn't give any weight to it.

MR. UZZI: Thank you, Your Honor.

MR. FLASCHEN: And, Your Honor, permit me to apologize to White & Case. The reference was only -- that group has made

up their own decision. They were not dictated by a less-than-ten-percent convertholder what they should do.

I won't respond to every point. As you said, you've read the papers. The standard that's being invoked today, that this Court must find there's a likely recovery for shareholders, I refer the Court to Judge Gropper's, I think, correct interpretation. This cannot be a valuation hearing. That's what confirmation is for. Were you to find today either it is likely solvent or likely insolvent, that would be prejudging an issue for confirmation. As Judge Gropper said, you should find whether there is a legitimate dispute, and therefore a party should be given the opportunity to pursue that dispute.

The standard that they invoke also implicitly would require us, and they complain that we have not, shown up with testimony. Again, if Q Investments had paid one cent yesterday and they wanted five cents tomorrow, the cost of mounting a valuation fight for this hearing would be just added to the penny shares. They've already lost 14 million dollars. They're already paying something to us; it's capped but they're paying something. For them to get a financial advisor to give an expert opinion, who will then need to do the due diligence to do the expert opinion, then will have to state an expert opinion, which is an indemnity and liability issue. Another 500,000 dollars, another 750,000 dollars, I don't know, just to

get up in front of you so we can present the evidence that they say we have to present, that cannot be the standard that a shareholder has to do all that in order to request the appointment of a committee.

Objecting parties. I noticed the U.S. Trustee's not here. I noticed the U.S. Trustee did not --

THE COURT: The U.S. Trustee is here.

MR. FLASCHEN: The U.S. Trustee has not stood up. The U.S. Trustee has not filed an objection.

THE COURT: The U.S. Trustee --

MR. FLASCHEN: Of course they oppose it.

THE COURT: Excuse me. Excuse me. The U.S. Trustee acted in a manner consistent with its responsibilities in the case to consider requests for appointment of a committee and to reject those requests. In effect, the U.S. Trustee has already spoken more loudly by its pre-motion conduct than anything that could be said during the hearing.

MR. FLASCHEN: Then I will limit the comment to the fact that a one-paragraph letter saying request denied is not nearly as forceful in a de novo hearing than an objection setting forth the reasons for the denial. We are still silent on that, and this is a de novo hearing.

THE COURT: Well, other parties-in-interest with economics at stake have dedicated the resources necessary to present the Court with everything the Court needs to consider

the question.

MR. FLASCHEN: You've hit that on the head, Your Honor. And who is going to, with the economic stakes, present those arguments on behalf of equityholders? When one equityholder is getting all this cash, all these notes, all these shares, the others are not.

Question of delay. If Your Honor's primary concern is delay, we do not represent the committee, but Your Honor, I imagine, would be free to say I will approve the appointment of the committee on the condition that confirmation occur no later than X. And whether that date was September 15th or July 20th or tomorrow, an equity committee would show up and do its best job.

So the fact that I am being honest with you in saying yeah, to put on a proper case it's going to take a little time doesn't mean an equity committee couldn't show up July 20th, if that was really needed.

The rights offering. The time to subscribe to it has closed. I'm going to guess, it was slowly subscribed, given the value of shares today, but the rights offering is based on valuations from January. I guess that's a pretty good guess. I would also submit, if they opened up the rights offering to shareholders -- this was not opened up to shareholders -- people like you would gladly subscribe for the rights at that January valuation. If they did an IPO, which has been done in

Chapter 11's, I think the market would pay more than what that rights offering provides.

So, yes, yes, when they negotiated this in January, was this rights offering -- was that money important? Yes, it was. I'm not saying then they were trying to do something inappropriate. And the releases is a different issue from the valuation, but we're six months later and just the stock price of the peers they cite alone shows the difference.

So, again, if the standard is we have to show up with experts, we have to pay for them, we lose. We have not shown up with experts. We haven't spent the 500,000 dollars to do that. If the standard is Your Honor must find a likely recovery for shareholders, then we can skip the confirmation hearing because that's what the issue would be at confirmation if equityholders pursued that issue. If the issue is it's never been done post-disclosure statement, the cases that talk about that say it's because the equity committee should be there in time to negotiate the plan.

This plan was carved in stone on February 15th, 2009, six weeks before the Chapter 11 petition was filed. So could an equity committee have objected to a disclosure statement? What would we object to? As they admit, the issues we'd object to, valuation recoveries are confirmation issues.

So we could have flagged them and they'd have said okay they flagged them, that's a confirmation issue. It was

not a disclosure statement issue. Should we have shown up earlier? It would've been nice. But I've given you two, I think, pretty good motivations why Q overcame its, you know, reluctance to send more money out of its own pocket because first-quarter results and then the stock prices. So, spending 2 million dollars or whatever it is, I don't know, I haven't done an equity committee as you said. I don't know if there'll be an equity committee here; we will seek it.

But 20 million dollars for Paul Allen alone. We are looking at -- their own December valuations show that the equity that the committee is getting is worth 2 billion dollars. If it takes an equity committee 2 million dollars to challenge that valuation and if they settled okay, we'll give you three billion to go away, you know, as I said, since -- Q's lost a lot more than that. That's not their motivation. But spending whatever it takes for an equity committee to challenge such huge values, to challenge such fundamental releases -- as you said, the U.S. Trustee doesn't need to get up. There's well-paid people here to defend their rights. Well, where's the well-paid people defending the rights on the shareholders being forced to release litigation they've already commenced for absolutely nothing when another shareholder is getting much. Thank you, Your Honor.

THE COURT: Okay. Anything more?

MR. HESSLER: Your Honor, Steve Hessler of Kirkland &

Ellis on behalf of the debtors. Three very discrete points and quickly. We understand that Q Investments does not want to pay for experts to conduct an additional valuation, but that alone is just not a basis for this Court to conclude that any alleged improvements in cable markets overcomes the fact that the plan proposes to extinguish 8 billion dollars in debt.

The second point, Your Honor, we've been talking about the consequences of delay and the reinstatement litigation. To put a bit of a finer point on what those consequences could be in this case, there have been dozens of depositions already. Those depositions would potentially have to be redone or reopened for the participation of an equity committee. There've been hundreds of thousands of documents produced thus far. Additional document production would have to be undergone. Opening X reports in this litigation began within a week; and, again, that would be delayed as well, Your Honor.

The third point that we just wanted to make sure we did have on the record, the equity committee motion does indicate Q Investments' willingness to serve on an equity committee. As we indicate in our motion, as a major holder of CCI debt and equity, we do believe Q Investments has an inherent conflict that would prevent it from serving on a committee. And if, in fact, the committee needed to start anew on finding additional members and Q Investments couldn't, sort of, marshal and pursue that effort, that would just lead to

additional delay in this case, Your Honor. Thank you very much. We urge that the motion be denied.

THE COURT: Okay. Thank you. I've listened to the arguments presented, and prior to the argument I have spent some time with the papers submitted both in support of the proposition that an equity securityholders' committee is needed and papers that have been submitted in opposition. The appointment of an equity securityholders' committee under applicable precedent is the exception and not the rule. And the statutory standard which everybody recognizes is set forth in Section 1102(a)(2) which reads, "On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors who are equity security holders." The Williams Communications case, which I'm quite familiar with, expands on this. I'm also familiar with Judge Gropper's decision last year, In re Oneida. Even that case which appointed a committee recognized that it was the exception and not the rule for such committees to be appointed.

This is a fact-intensive analysis, and the facts of each circumstance presented may vary. I recognize that this request is being made late in the case. I don't take particular comfort from the fact that we're talking about a request being made after approval of a disclosure statement.

While I recognize there's no case that has been decided or, for that matter, that I'm aware of, that's ever been prosecuted in which the request for approval of an appointment of a committee such as this has been made after the disclosure statement has already been approved and creditors have been solicited, I don't view that fact alone as being dispositive. And so while I considered that argument, I don't think that argument is the reason to deny this motion. There are multiple other reasons to deny the motion.

I noted papers filed by Paul Weiss on behalf of the crossover committee which referenced the Iridium v. Motorola decision. And I'll admit that I'm sufficiently familiar with that case that I took note of it. I believe that what the markets are communicating as to value may not be ultimately determinative as to value, but it is evidence that I can consider even in the absence of experts who are presented at some expense to support the motion. For that reason, the fact that this is not an evidentiary hearing is not dispositive of whether or not there is sufficient equity value notionally out there that may require representation.

As the Paul Weiss papers note, the trading value of the equity in this case even today is indicative of, at best, option value. In stating that, I don't mean in any respect to foreclose the opportunity of parties-in-interest to appear and be heard at the time of the confirmation hearing to challenge

the valuations on the basis of which this plan has been promulgated. Indeed, I assume there will be a full and fair opportunity at that time to test the valuation propositions that support the plan.

The limited response and reservation of rights filed by Law Debenture Trust Company of New York on behalf of the CCI noteholders represented by that indenture, among other things, reserves rights with respect to valuation issues to be presented at confirmation. But those papers also do more. Without really taking an active position as to whether or not an equity committee should be supported, those papers also make clear that the interest of the noteholders at the CCI level are fully congruent with the interest that would be represented by an equity committee, were such a committee to be appointed. I know from my experience this week in having participated in an informal discovery conference, the counsel for the indentured trustee is currently involved in active discovery relating to many of the very same issues that an equity committee might be pursuing. Those issues include the Paul Allen releases.

I'm also aware, based upon my review of the papers filed by the creditors committee, that while a different constituency is represented by that committee, that the committee is involved in an active review on behalf of its constituency of all aspects of the plan including the releases. The fact that the U.S. Trustee has already filed an objection

in reference to those releases demonstrates that that issue will be fully developed at the time of the confirmation hearing.

Among the things stated by Mr. Flaschen at the outset of his presentation was the comment that he was appearing here in a somewhat unusual setting for him professionally in that he has not in the past sought to obtain an order authorizing the appointment of a committee of equity securityholders. When I was in practice, I did that twice, and I know firsthand that it is a tough job to prevail. My batting average was 50 percent: I succeeded in one case and I failed in another. But in the case in which I succeeded, the rather wise bankruptcy judge said while I'm going to hold you to a substantial contribution standard for any compensation that might be awarded to counsel who might appear on behalf of the committee, you can have your committee but you're not going to have a guaranteed payday for representing that committee. Based upon that standard, you could say that my batting average is zero.

The costs to the estate associated with the appointment of an equity securityholders' committee go beyond that of mere expense, assuming that this were a committee that would be entitled to seek compensation as the administrative expense claim, although there's no assurance that if a committee were appointed it would be represented by Bracewell and Giuliani. The comments made by counsel I view as candid

and compelling, but compelling in the direction of not appointing the committee, to the extent that the appointment of an equity securityholders' committee in this case, at this point in the plan confirmation process, necessarily involves a delay in confirmation of not less than sixty days.

And while nobody said it, it's probably likely that there would be more than sixty days. In a situation in which the plan support agreements, by their terms, blow up at the 150-day mark of the case suggests to me that to appoint an equity securityholders' committee, under these circumstances, not only to fails to meet the standard that I announced at the outset as set forth in section 1102(a)(2) inasmuch as it is not necessary to assure adequate representation, but it also represents an unnecessary threat to the viability of the plan process itself.

I believe also that Mr. Flaschen in his opening remarks, when he commented that he was submitting this motion, and I wrote this down, quote, "without evidence to back up what he was pressing for", mainly the proposition that there was value in equity, largely based upon the perception of his client that this industry sector had markedly improved since the plan was negotiated, represents the kind of perception that, while it may be true, is hardly evidence. And it's also a perception that does not do anything to prove the proposition that there is any value in the equity.

Because there is no support for the proposition that this company is anything other than hopelessly insolvent at the equity level, and there is no support for the proposition that the issues that might be vetted by a committee are not currently being adequately addressed by others, the motion is denied.

Now, what's happening in respect to the class action?

MR. HESSLER: Thank you, Your Honor.

THE COURT: Thank you.

MR. MCKANE: All right. Your Honor, I'll allow plaintiff's counsel to step forward if necessary, but what I believe that I can represent is that we have reached at least an agreement in principle as to language but that both sides wanted to check with some of the counsel who would be litigating the underlying matter and that we'll be submitting a stipulation to you, if not today, very shortly.

THE COURT: Fine.

MR. MCKANE: Thank you.

THE COURT: So we'll take it off calendar subject to your working out final language.

MR. MCKANE: That's right. We'll submit a new motion to approve a stipulation once the language has been buttoned down, if necessary.

THE COURT: Well, can't we just approve the stipulation and be done with it?

MR. MCKANE: I would like to.

THE COURT: I mean -- to have to file yet another motion in reference to what is really intended to be a pass-through treatment --

MR. MCKANE: We'll file a stip. We apologize, Your Honor.

THE COURT: Fine. Let's just do that.

MR. MCKANE: All right. Thank you.

THE COURT: I'm just trying to save trees.

MR. MCKANE: Understood. Thank you, Your Honor.

MR. HESSLER: Thank you, Your Honor.

THE COURT: Is there anything more?

MR. MCKANE: No, Your Honor.

THE COURT: Fine. See you all next time. We're adjourned.

(Proceedings concluded at 11:12 AM)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Date: June 18, 2009